

Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130044-7

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OGC 76-2769  
26 May 1976

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11 May 76

MEMORANDUM FOR: Director of Central Intelligence

FROM:



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SUBJECT: Reporting of Allegations of Minor Criminal  
Offenses to the Department of Justice

REFERENCE: Speed Letter from Chief, Services Staff, to  
DDO, Subj: Overreaction by OGC, dtd  
3 May 76

1. In the wake of the repudiation by the Congress and the Department of Justice of an agreement between the Agency and Justice which allowed the Agency discretion in reporting violations of the criminal code involving sensitive matters, Agency crime reporting procedures have been under intense scrutiny.

2. Section 535(b) of Title 28 of the United States Code states:

Any information, allegation, or complaint received in a department or agency of the executive branch of the Government relating to violations of Title 18 involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency....

3. The Office of General Counsel and the Criminal Division, Department of Justice, have worked out provisional reporting procedures pursuant to 28 U.S.C. 535 pending release of the new Attorney General guidelines on this subject. These procedures require that we report any information, allegation or complaint of a crime, in which there is no suspect, to the FBI; that we report any information, allegation or

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complaint to the U.S. Attorney when there is a suspect and when possible prosecution would not result in damage to national security; and that we report such cases where prosecution could result in damage to the national security, to the Criminal Division.

4. In developing these procedures, the Department of Justice has been extremely careful to blunt any future criticism that it had abdicated its prosecutorial discretion to the Agency. Justice has argued that as soon as any information, allegation or complaint surfaces from any quarter, a report must be made. We have successfully (to date) argued that CIA must investigate such cases in an effort to obtain some substantiation because we would not report a charge which was totally without foundation. Justice, for its part, has insisted that a CIA determination whether to report any information, allegation or complaint may not wait total corroboration of the charges, that it is for Justice and not the CIA to determine whether there is sufficient evidence to warrant indictment and prosecution.

5. Justice has argued that as soon as the Agency has the slightest substantiation, it should not only report the matter but should stop its own investigation pending Department of Justice instructions. The Office of General Counsel has successfully argued that Office of Inspector General and Office of Security investigations should not be halted and should not be dependent on criminal prosecution. It was noted that the DCI has the responsibility to run the Agency and that this responsibility included taking certain administrative and personnel actions without waiting for the Department of Justice to study the criminal charges and desirability of prosecution. There would be many instances in which an individual, suspected of a violation of the criminal code, would be handling very sensitive operations and would have access to highly classified information. The Agency would want to determine quickly whether to remove that individual from such work and such access.

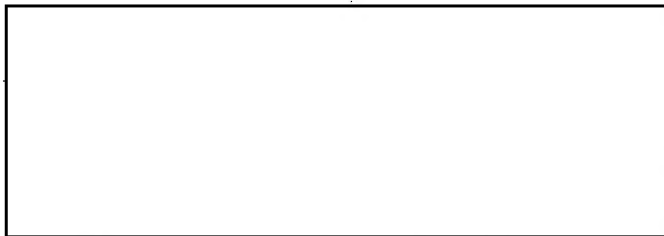
6. Finally, the Office of General Counsel argued that minor cases, for example, involving less than \$200, should not be referred at all. Such cases could be more suitably dealt with by administrative action than by criminal prosecution and, in any event, criminal prosecution was highly unlikely. It was also suggested that other Government agencies

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do not report to the Attorney General every time a pencil is stolen and that it was understood that Justice has agreements with other agencies which set a certain threshold in dollars or importance which had to be met before a violation or allegation of a violation had to be reported. Justice, after checking, stated that there were no such agreements with any other Government agencies, that no \$200 cutoff was acceptable, and that Justice wished to decide on a case-by-case basis, no matter how trivial the case, whether or not prosecution was warranted.

7. Given this Department of Justice position, the Agency has had no choice but to report matters such as allegations of petty theft. It should not be thought, however, that the Office of General Counsel is insensitive to potential problems caused by such unrealistic reporting requirements. The Office has taken steps to insure that every fact in mitigation is presented so that prosecution may be avoided if possible. In addition, the Office of General Counsel has successfully resisted providing the name of the employee, whether or not under cover, until and unless a decision to prosecute is reached. Thus, in referent "ice cream case," an Office of General Counsel attorney informally approached the Assistant U.S. Attorney and obtained a commitment that no prosecution would occur some two weeks before a formal report was sent, as required by 28 U.S.C. 535. Moreover, the formal report merely designated the employee accused of the theft as John Doe No. 3.

8. In sum, reporting of allegations of minor crimes is required by the law but it is felt that the approach currently followed safeguards the rights of the individual concerned and serves to protect any operational interests of the Agency.



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